STATE OF MICHIGAN

COURT OF APPEALS

In re RICHARD R. DAVIS, JR., MINOR

STATE OF MICHIGAN,

Petitioner-Appellee,

v

RICHARD R. DAVIS, JR.,

Respondent-Appellant.

UNPUBLISHED
May 29, 2003

No. 238608
Montcalm Circuit Court,
Family/Juvenile
Division
LC No. 2001-000019-DL

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Respondent appeals as of right his October 26, 2001, jury adjudication sustaining a petition's allegations that he committed one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a), and one count of CSC III, MCL 750.520d(1)(a). On December 4, 2001, the trial court entered a disposition order that required respondent to serve one year on probation and pay $515 in restitution to one of the victims. We affirm.

Respondent first argues that the trial court erred when it permitted respondent to withdraw his guilty plea after it already entered a disposition order. We review for an abuse of discretion a trial court's decision to allow a juvenile to withdraw an accepted plea. MCR 5.941(D). However, whether a trial court may allow a respondent to withdraw a plea after entering a disposition order is a question of law we review de novo. *In re Ballard,* 219 Mich App 329, 331; 556 NW2d 196 (1996). Respondent failed to argue below that the disposition precluded the trial court from allowing respondent to withdraw his plea. Therefore, this issue was not preserved. *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995). When a respondent asserts unpreserved, nonconstitutional error, reversal is not warranted absent plain error that affected the respondent's substantial rights. *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 606; 603 NW2d 824 (1999). According to MCR 5.941(D), a trial court "has discretion to allow the juvenile to withdraw a plea" after the trial court has accepted the plea. After disposition, respondent argued that his plea was not knowingly made because he lacked notice that both victims would receive restitution. Respondent chose to withdraw his plea instead of accepting the disposition's modification to include additional restitution. Therefore,

he may not argue on appeal that the trial court erred when it granted him something he requested. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999).

Respondent next argues that the trial court abused its discretion by denying his motion to reinstate the withdrawn guilty plea without restating his admissions. Respondent also argues that the trial court erred in denying his alternative motion to enter a no-contest plea. We review a trial court's decision to accept a plea for an abuse of discretion. MCR 5.941; *People v Grove*, 455 Mich 439, 456; 566 NW2d 547 (1997). We only find an abuse of discretion in extreme cases where the result is so "palpably and grossly violative of fact and logic" that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *In re Nord*, 149 Mich App 817, 823; 386 NW2d 694 (1986), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

In this case, the trial court had already allowed respondent to withdraw his plea once based on his surprise that the statements he made required him to pay restitution to both victims. If the trial court allowed respondent's plea to stand on statements he made unknowingly, then respondent could later argue the invalidity of the reinstated plea and subsequent disposition. *People v Davidovich*, 238 Mich App 422, 427-428; 606 NW2d 387 (1999). This fact justified the trial court in withholding its consent to the guilty plea until respondent repeated his admissions. MCR 5.941; *Nord*, *supra* at 823. Likewise, respondent's argument that the trial court abused its discretion by withholding its consent to a no-contest plea fails. The trial court correctly found that respondent faced no greater risk of civil liability for repeating his admissions. MCL 712A.23; *People v Hammond*, 27 Mich App 490, 494; 183 NW2d 623 (1970). Therefore, the trial court did not abuse its discretion when it required respondent to restate his admissions as a condition to accepting his plea.

Respondent argues that the trial court abused its discretion when it denied his demand for a bench trial. However, the trial court had already ordered a jury trial in this case, and in juvenile cases, MCL 712A.17(2) empowers trial courts to order jury trials on their own motion. Therefore, a trial court has discretion to order a jury trial in juvenile proceedings, and we review the denial of respondent's request for a bench trial for an abuse of discretion in this case. *People v Brown*, 249 Mich App 382, 386; 642 NW2d 382 (2002).

Fifteen days before trial, respondent's new counsel still did not know whether she preferred a jury or bench trial and stated that she would need to file a motion on the subject. To expedite matters, the trial court exercised its discretion and ordered a jury trial. MCL 712A.17(2). After the trial court ordered the jury trial, respondent attempted to disqualify the trial judge. The trial court heard respondent's request for a bench trial after respondent had moved for disqualification. It appears that the trial court denied respondent's bench-trial motion so that any factual findings at trial would be insulated from respondent's allegations of bias and prejudice and so the trial court could expedite trial. The trial court's desire to insulate the court's factfinding function from the appearance of prejudice was a sound reason to deny respondent's request for a bench trial.

Respondent next argues that the trial judge's participation in the earlier proceedings and his relationship to one of the victims required the judge's recusal. In disqualification cases, the factual findings of the trial judge and reviewing judge are reviewed for an abuse of discretion, but their application of the law to the facts is reviewed de novo. *Cain v Dep't of Corrections*,

451 Mich 470, 503 n 38; 548 NW2d 210 (1996). The trial judge admitted that he represented one victim's father over twelve years earlier and that a child with the same name as one of the victims served at his wife's church. The trial judge also presided at the plea and disposition hearings and reviewed some information related to respondent's disposition, including psychological recommendations for treatment. The trial judge correctly found, however, that respondent failed to show any prejudice or bias arising from these circumstances. Representation of a party does not automatically disqualify a judge unless it occurred within two years of the proceedings in question. MCR 2.003(B)(4). Furthermore, exposure to facts during earlier judicial proceedings does not preclude a trial court from presiding at a subsequent jury trial. *Kolowich v Ferguson*, 264 Mich 668, 671-672; 250 NW 875 (1933). Also, because the case was tried by a jury, the judge's thoughts regarding respondent's guilt and the victim's credibility do not constitute prejudice. *Id*. Therefore, the trial court did not abuse its discretion when it denied the disqualification motion. MCR 2.003.

Respondent also argues that the trial court erred when it allowed trial to continue despite the fact that more than six months had passed since the filing of the petition, contrary to MCR 5.942(A). Whether a trial court violated MCR 5.942(A)'s six-month rule is a question of law we review de novo. *People v Petit*, 466 Mich 624, 627; 648 NW2d 193 (2002). We find that respondent failed to raise this issue in a timely manner and that his actions accounted for four months of the eight-month delay. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000). Furthermore, the sincerity of respondent's claim of prejudice is belied by his requests for adjournment in the trial court and on appeal. *People v Rosengren*, 159 Mich App 492, 508; 407 NW2d 391 (1987). Therefore, the trial court did not err when it found that the trial was timely.

Respondent finally argues that the trial court erred when it found untimely his motions for severance of the counts and adjournment to prepare for a single trial. Whether a motion was untimely filed is a question of law we review de novo. *Petit*, *supra* at 627. Respondent filed these motions on the first day of trial after the jury was sworn. Parties must file adjournment motions and motions for severance before trial if they know the motions' basis before trial. *People v Williams*, 114 Mich App 186, 201; 318 NW2d 671 (1982); *Bordeaux v Celotex Corp*, 203 Mich App 158, 165; 511 NW2d 899 (1993). Because respondent had knowledge of the joinder motion petitioner filed months before trial, his motions to adjourn and sever the trial were properly denied as untimely.

Affirmed.

/s/ Michael R. Smolenski
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell